

Application No. 10/842, 634
Reply to Office Action dated August 13, 2004

Remarks/Arguments

Reconsideration is hereby requested, as is a three-month extension of time, within which to respond to the Official Action. The Small Entity extension of time fee for three months in the amount of \$510.00 is to be charged to Deposit Account No. 502557.

Reconsideration is hereby requested, as is a three-month extension of time within which to respond to the Official Action. Applicant remains a Small Entity.

Further to the rejection under 37 U.S.C. 112, Claim 6 has been amended. Claims 1, 10 and 12 have also been amended responsive to the rejection of Claims 1-5, 7-10 and 12 under 35 U.S.C. 102(b) as anticipated by Schliger (4,885,884). Claim 12 has also been rejected under 35 U.S.C. 103(a) as unpatentable over said Schliger in view of Attalla (5,315,804).

With respect to Schliger, Applicant respectfully urges that the Examiner compare Fig. 1 of Schliger with Figs. 1 and 3 of the Applicant's drawings and, as well, compare the cross-sectional assembly view of Fig. 11 of Schliger with the corresponding assembly view of Fig. 10 of Applicant's drawings. More particularly, as may be noted in Fig. 1 of Schliger, the structure thereof is essentially that of a metal stud 10 which is symmetric about a centrally disposed

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virtual xz plane. Therein, the only variation from symmetry in the stud of Schliger lies in its provision of so-called spaced lugs 15 formed by cuts 14 extending inwardly from an edge of inner flange 13 (Col. 2, L. 63-65). Thereby, lugs 15, depend from inner flanges 13, from a line of dependency in the z-axis. Further, most of the area of each lug 15 lies within the yz plane thereof. However, the edges of each lug 15 include a xz plane end part 15~ which was a part of the original edge lip portions 19 of the stud before lugs 15 were formed. The function of lug 15 in Schliger is to enable suspension of stud 10 from a wood or insulation panel 16 (see Fig. 2 thereof) by embedding said spaced lugs 15 (yz part thereof) into reinforcing mesh 17 (see Col. 3, L. 30-38) which in turn is secured between said wood panel 16 and concrete panel 18. As such, there exist significant differences in structure as well as function between the metal studs of Schliger and Applicant. More particularly, as may be appreciated with reference to Figs. 1 and 3 of the Drawings, the Applicant's stud does not include any portion which corresponds to lug 15 of Schliger. If such portion were a part of Applicant's structure, it would depend laterally outwardly in the y direction from the z-axis edge of xz tab 20, that is, at right angles thereof, projecting outwardly into the yz plane. This may be further seen with reference to the cross-sectional view of Fig. 3 of Applicant. Therein, it may be appreciated that there does not exist any structure which might correspond to lugs 15 of Schliger or to edge lip portion 19. Such an edge lip portion exists only as element 26 at the opposite longitudinal edge of Applicant's stud 10. No corresponding element exists along the opposite

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z-axis edge of Applicant's stud. These are differences not simply of design choice but, rather, differences with functional implications, i.e., the functionality of the stud of Schliger, when used in a larger constructional context as exemplified by Figs. 3 and 11 thereof, while the function of Applicant's system may be appreciated with reference to Figs. 8 and 10 thereof. The differences are that the stud of Schliger facilitates suspension of solid blocks of insulation 38 which in turn "become a form work for the pouring of concrete as well as remaining in place as permanent insulation." (Col. 4, L. 27-29). This is accomplished by embedding lugs 15 within stud enforcing mesh 17, such that wood panel 17 may be secured to concrete panel 18 so that the entire assembly, as above noted, supports solid blocks of insulation, 38 as is shown in Fig. 11. In distinction, Applicant's stud is not used in a suspension of any kind. Rather, Applicant's stud is intended for use within a load-bearing wall and, as such, its orientation is typically in the vertical or z-axis, as opposed to the horizontal (xy plane) orientation of the stud of Schliger. As may be noted in Figs. 7 and 10 of Applicant's drawing, the provision of a projecting element, such as said lug 15 of Schliger, in the y-direction, might cause penetration of the outer cosmetic wall of the structure. It may accordingly be appreciated that spaced lugs 15 of Schliger would not be compatible with the utility of Applicant's system and, conversely, the absence of such lugs in Applicant's system would render it useless for the suspension function contemplated by Schliger. Therefore, since each invention contemplates a different solution to a different problem, it is indeed unlikely that

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one would have considered the lugs 15 of Schliger to produce the system of Applicant. A fortiori, 35 USC 102(b) cannot be applicable.

Of Applicant's various embodiments, only the embodiment of Fig. 2B includes any element (pin 219) which projects away from the web of the stud in a y-axis direction. However, even in said embodiment, pin 219 is not dependent from tabs 20, as would be necessary to render that element, in any way, analogous to lugs 15 of Schliger.

To make the above distinctions evident, Applicant has amended ¶(b) of Claims 1, 10 and 12 to include the term "wholly" before the term "embedded" to make clear that the xz plane tabs 18 and 20 of Applicant's stud are entirely embedded within concrete slab 34 (see Figs. 7, 9 and 10 of Drawings). As above noted, this is clearly not the case in the structure of Schliger in which yz portion of the lugs 15 passes through wood panel 16 such that edge lip portion 19, also termed end part 15", are the only parts of lugs 15 embedded within concrete. This is clearly evident in the sectional view of Fig. 11 of Schliger which shows that inner flange 13 is secured within mesh 39, while only lugs 15 project into concrete 37. As may be noted in Figs. 7 and 10 of Applicant's drawings, tabs 18 as well as tabs 20 are both wholly embedded within concrete slab 34.

With respect to the rejection Claim 12 as unpatentable over Schliger in view of Attalla, Applicant urges that, in the above arguments, he has sufficiently

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distinguished over the teaching reference of Schliger such that Attalla, even if combined with Schliger, should not stand as a basis for rejection of the embodiment of Applicant's Fig. 2C.

In view of the above, all objections and rejections of record are believed to have been satisfactorily responded to and, as such, the early allowance of this Application is believed to be indicated.

Respectfully submitted,
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